EVERETT HALL

IBLA 88-6 Decided March 28, 1988

Appeal from a decision of the Miles City District Office, Bureau of Land Management, approving an application to plug and abandon two oil wells on allotted Indian lands. Fort Peck Allotted Oil and Gas Lease No. 14-20-0256-3882 (Montana).

Affirmed.

1. Indians: Mineral Resources: Oil and Gas: Generally--Oil and Gas Leases: Generally--Oil and Gas Leases: Production

   Where the evidence establishes that a well drilled under an allotted Indian lands lease is no longer capable of producing oil or gas in paying quantities, and an opportunity has been afforded to the Indian lessor to obtain another operator but attempts to obtain one have been unsuccessful, a decision by BLM permitting the original operator to plug and abandon the well will be affirmed.

APPEARANCES: Everett Hall, pro se; Roger W. Thomas, Esq., Office of the Field Solicitor, Billings, Montana, for the Bureau of Land Management; T. Bruce Pettit, Division Manager, Tulsa, Oklahoma, for Reading & Bates Petroleum Company.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Everett Hall has appealed from a decision of the Miles City, Montana District Office, Bureau of Land Management (BLM), dated September 15, 1987, granting an application to plug and abandon two oil wells, filed on behalf of Reading & Bates Petroleum Company (R&B), the operator under Fort Peck Allotted Oil and Gas Lease No. 14-20-0256-3882 (Montana).

The lease involved had originally issued effective May 15, 1975, embracing 320 acres, for a 10-year term and so long thereafter as oil or gas was produced in paying quantities. Two wells were subsequently drilled on the lease, the Allotted Hall Nos. 1-29 and 2-29. Production was ultimately achieved from both wells. However, both wells also produced significant

amounts of salt water. This salt water was originally disposed of in the Allotted Hall SWD well. However, some time in 1985, the Environmental Protection Agency (EPA) informed R&B that it would have to abandon the Allotted Hall SWD well in the near future. R&B commenced making plans to drill another salt water disposal (SWD) well and started the process of permitting the Allotted Hall No. 41-29 SWD.

Approval for the new SWD well was obtained in April 1986. By that time, however, the depressed economic conditions in the oil industry made it economically infeasible to drill a new SWD well. Pursuant to the final order of EPA, the original SWD well was finally abandoned on July 7, 1986. Since it was impossible to continue production without on-site disposal of the salt water, the two oil wells were shut-in at that time.

On September 10, 1986, R&B submitted a sundry notice to BLM advising it that the Allotted Hall Nos. 1-29 and 2-29 had been shut-in on July 7, 1986. Subsequently, after R&B had submitted justifying information to both the BLM District Manager and the Superintendent, Fort Peck Agency, Bureau of Indian Affairs (BIA), the shutting-in of these two wells until May 31, 1987, was approved.

On January 8, 1987, R&B filed two Notices of Intent to Abandon (NIA), requesting permission to plug and abandon the two wells. In response thereto, BIA notified R&B that it would not approve the abandonment of the wells at that time and directed the operator to retain all equipment necessary for continued operation of the wells at the site until BIA was able to determine whether production should continue or whether plugging and abandonment could be approved. BIA also asked BLM to conduct an economic evaluation of the wells and recommend what action should be taken.

On May 5, 1987, BIA advised appellant that BLM had concluded that further operation of the two wells would not be economic without an on-site SWD well, and that the costs associated with drilling such a well would be prohibitive. Accordingly, BLM had recommended approval of the NIA. BIA informed Hall that its own geologist had "echoed" BLM's conclusions. BIA therefore advised Hall that, in order to prevent the present operator from plugging and abandoning the wells, he would need to secure a new operator prior to May 31, 1987. If no new operator were secured, BIA advised Hall that it would initiate action based on BLM's recommendation.

On June 15, 1987, Hall filed a request with BIA seeking a 90-day extension of time, averring that he was "negotiating for a new operator." On June 23, 1987, BIA advised R&B that it was still considering whether these wells should be plugged and abandoned and informed R&B that another entity had "requested an opportunity to discuss and negotiate an agreement for the subject wells." Accordingly, the Superintendent, BIA, directed that the temporary shut-in status be continued "until such time that I feel that ever [sic] possibility of securing a new operator is exhausted."

By memorandum dated July 10, 1987, from the Miles City District Man- ager, BLM, to the Superintendent, Fort Peck Agency, BIA, BLM reiterated its conclusion that, based on its economic analysis, the wells were not capable of production in paying quantities and the leases should be terminated. How-ever, noting that another company had shown a "valid interest in operating the two wells," BLM concurred in the granting of the extension which Hall had requested.

On September 11, 1987, Hall requested an additional 90 days in which to negotiate for a new operator. BLM did not directly act on this request, but, on September 15, 1987, effectively denied it by approving R&B's request to plug and abandon. Hall appealed this determination to the Board.

In his statement of reasons in support of his appeal, Hall requested that we stay action by R&B pursuant to the approved NIA. Such a formal stay was arguably necessary to prevent R&B from plugging and abandoning the two wells since, under 43 CFR 3165.4(c), an appeal from a decision relating to oil and gas lease operations does not result in suspension of the requirement for compliance with the order unless the Board determined, inter alia, that the suspension would not be detrimental to the lessor.

By order dated November 12, 1987, the Board suspended all action under the approved NIA. Recognizing that a long delay in finally resolving the matter might severely disadvantage the operator, the Board agreed to expe- dite a final decision in this appeal. The Board expressly noted that "[a]ppellant's submissions to this Board fall short of what is necessary to convince us that reversal of BLM's approval is appropriate." The Board, therefor, accorded appellant 60 days in which he might show cause why BLM's decision should not be affirmed.

Since that order, the Board has received no further documentation from appellant. Thus, adjudication of the instant appeal based on the record as it now exists is clearly appropriate.

[1] As we indicated in our order of November 12, 1987, appellant's submissions are simply inadequate to establish error in BLM's decision. The record on appeal contains a detailed profitability analysis for the two wells, which clearly establishes that they are not capable of production in paying quantities. Appellant asserts the contrary, but provides no data whatsoever which would support his conclusions.

Moreover, appellant has been afforded more than sufficient time to obtain another operator. His inability to interest one reinforces the conclusions which flow from BLM's economic analysis; namely, the wells are at the present time, and within any realistic future time frame, simply not economic to operate, particularly in view of the necessity of providing for on-site salt water disposal.

Finally, appellant's complaint that BIA failed to require the operator to obtain prior approval for the well shut-in under the Department's marginal well policy misapprehends the nature of the most recent decision. The shutting-in of the instant wells was approved on October 27, 1986. This shut-in was not premised on the marginal well policy, but rather was a necessary result of EPA's order to abandon the SWD well, since continued production was not possible absent a disposal site for the salt water. The issue under appeal herein is not whether R&B should be allowed to shut in the wells, it is whether or not R&B should be allowed to plug and abandon them. As indicated above, the evidence is uncontradicted that the wells are not capable of producing in paying quantities and that BLM properly approved the request of R&B to plug and abandon them.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Anita Vogt
Administrative Judge
Alternate Member